

§ 3560.706

project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue collection of the unauthorized assistance from the tenant.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with § 3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties, in accordance with § 3560.461. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance due to borrower fraud.

§ 3560.706 Offsets.

Offsets and any other available remedies may be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

§ 3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the project if they have the legal and financial capabilities to do so. Approval considerations for such forbearance and repayment are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower at the incorrect interest rate will be reapplied at the correct

7 CFR Ch. XXXV (1-1-05 Edition)

interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency agrees to a separate repayment process.

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of this part, as applicable; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, for any reason, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation,